No. 13,939

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

WILLIAM JOY BATELAAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

REPLY BRIEF OF APPELLEE.

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REPLY BRIEF OF APPELLEE.

I.

STATEMENT OF JURISDICTION.

Appellant was indicted by the Federal Grand Jury in and for the Southern District of California on November 19, 1952, under Section 462 of Title 50, App., United States Code.[1] [Tr. pp. 3-4.]

On December 8, 1952, the appellant was arraigned, entered a plea of not guilty, and the case was set for trial on March 26, 1953.

On March 26, 1953, appellant was tried in the United States District Court for the Southern District of California before the Honorable William C. Mathes sitting

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[1]"Tr." refers to Transcript of Record.

without a jury, and was found guilty as charged in the indictment.

On April 7, 1953, appellant was sentenced to imprisonment for a period of four years and judgment was so entered. Appellant appeals from this judgment.

The District Court had jurisdiction of this cause of action under Section 462 of Title 50, App., United States Code, and Section 3231, Title 18, United States Code.

This Court has jurisdiction of the appeal under Section 1291 of Title 28, United States Code.

II.

STATUTES INVOLVED.

The Indictment in this case was brought under Section 462 of Title 50, App., United States Code.

The Indictment charges a violation of Section 462 of Title 50, App., United States Code, which provides, in pertinent part:

> "(a) Any . . . person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451-470 of this Appendix], or the rules or regulations made or directions given thereunder, who shall knowingly fail or neglect to perform such duty . . . or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under oath in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said section] . . . shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment . . ."

III.

STATEMENT OF THE CASE.

The Indictment charges as follows:

"Indictment

[U. S. C., Title 50, App., Section 462—Universal Military Training and Service Act]

The grand jury charges:

Defendant William Joy Batelaan, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 83, said board being then and there duly created and acting, under the Selective Service System established by said act, in Los Angeles County, California, in the Central Division of the Southern District of California; pursuant to said act and the regulations promulgated thereunder, the defendant was classified in Class I-A and was notified of said classification and a notice and order by said board was duly given to him to report for induction into the armed forces of the United States of America on October 13, 1952, in Los Angeles County, California, in the division and district aforesaid; and at said time and place the defendant did knowingly fail and neglect to perform a duty required of him under said act and the regulations promulgated thereunder in that he then and there knowingly failed and refused to be inducted into the armed forces of the United States as so notified and ordered to do."

On December 8, 1952, appellant appeared for arraignment and plea, represented by J. B. Tietz, Esq., before the Honorable Ernest A. Tolin, United States District

Judge, and entered a plea of not guilty to the offense charged in the indictment.

On March 26, 1953, the case was called for trial before the Honorable William C. Mathes, United States District Judge, sitting without a jury, and the appellant was found guilty as charged in the indictment.

On April 7, 1953, appellant was sentenced to imprisonment for a period of four years in a penitentiary.

Appellant assigns as error the judgment of conviction on the following grounds:

A—The District Court erred in failing to grant the Motion for Judgment of Acquittal made at the close of the evidence. (Spec. of Error I—App. Br. p. 10.)[2]

B.—The District Court erred in convicting the appellant and in entering a judgment of guilt against him. (Spec. of Error II—App. Br. p. 10.)

C—The District Court committed reversible error in refusing appellant the right to use the secret investigative report at the trial as evidence to determine whether or not the report of the Hearing Officer and the recommendations of the Attorney General to the Board of Appeal was illegal, arbitrary, capricious and contrary to the facts appearing in the F.B.I. Report that appellant was a conscientious objector. (Spec. of Error III—App. Br. p. 10.)

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[2]"Spec. of Error" refers to "Specification of Error"; "App. Br." refers to "Appellant's Brief."

IV.

STATEMENT OF THE FACTS.

On July 11, 1950, William Joy Batelaan registered with Local Board No. 83, Burbank, California. He was eighteen years of age at the time, having been born on April 15, 1932.

On April 30, 1951, William Joy Batelaan filed with Local Board No. 83, SSS Form 100, Classification Questionnaire, and by signing Series XIV of this questionnaire informed the Local Board of his claim for exemption by reason of conscientious objection to participation in war in any form.

SSS Form 150, Special Form for Conscientious Objector, was furnished Batelaan and he completed this form and filed it with Local Board No. 83. Batelaan claimed to be a conscientious objector because of religious training and belief. He was classified 1-A on September 4, 1951, and was mailed SSS Form 110, Notice of Classification.

On September 12, 1951, Batelaan appealed the classification of 1-A given him by the Local Board.

On September 14, 1951, Batelaan requested a personal appearance before the Local Board. A personal appearance was granted for September 18, 1951.

On September 18, 1951, Batelaan appeared before the Local Board. Batelaan was continued in Class 1-A and he was so notified by the mailing of an SSS Form 100, Notice of Classification, to him.

On October 24, 1951, the Appeal Board reviewed Batelaan's Selective Service file and determined that he was not entitled to classification in either a class lower than 4-E or in Class 4-E and forwarded the file to the Department of Justice. A hearing was held by the Department of Justice Hearing Officer on July 1, 1952. The Hearing Officer recommended that Batelaan should not be given a classification of 4-E but should be given a classification of 1-A-O.

On July 24, 1942, the Assistant Attorney General, in his recommendation to the Appeal Board, denied all conscientious objector claims of Batelaan.

On July 29, 1952, the Appeal Board classified Batelaan 1-A. Batelaan was advised of this action by the Local Board on August 7, 1952.

On October 1, 1952, SSS Form 252, Notice to Report for Induction, was mailed to Batelaan, ordering him to report for induction into the armed forces of the United States on October 13, 1952, at Los Angeles, California.

On October 13, 1952, Batelaan reported for induction, as ordered, but refused to submit to induction into the armed forces of the United States.

V.

ARGUMENT.

A. Replying to Appellant's Assignment of Error, the Government Contends That the Classification Given the Appellant of 1-A Was Not Arbitrary and Capricious and Was Supported by Evidence Establishing a Basis in Fact.

There is no constitutional right to exemption from military service because of conscientious objection or religious calling. In *Richter v. United States,* 181 F. 2d 591 (9th Cir.), this Court says.

> "Congress can call everyone to the colors, and immunity from military services arises solely through Congressional grace in pursuance of traditional American policy of deference to conscientious objection, and there is no constitutional right to exemption because of conscientious objection or religious calling or conviction or activities."

Accord,

Tyrrell v. United States, 200 F. 2d 8 (9th Cir.).

Congress has granted exemptions and deferments from military service only to those who qualify under the procedure set up by Congress to determine classification—the Selective Service System. This procedure is administrative in nature, even though one may be criminally prosecuted for failure to comply with the orders of the Selective Service System.

Falbo v. United States, 320 U. S. 549;

Williams v. United States, 203 F. 2d 85.

The duty to classify and to grant or deny exemptions rests upon the draft boards, local and appellate. The burden is upon a registrant claiming an exemption or deferment to establish his eligibility therefor to the satisfaction of the local or appellate board.

United States v. Schoebel, 201 F. 2d 31 (7th Cir.);
Davis v. United States, 203 F. 2d 853 (8th Cir.).

Each registrant is presumed to be available for military service.

32 C. F. R., Sec. 1622.1(c);
United States v. Schoebel, supra.

Every registrant who fails to establish, to the satisfaction of a local or appellate board, his eligibility for exemption or deferment is placed in Class 1-A.

32 C. F. R., Sec. 1622.10.

In the instant case, both the local and appellate boards considered the claims for exemption made by the appellant. Both boards rejected the appellant's claim based upon the information presented to them.

The classification by the Local Board and thereafter by the Appeal Board, made in conformity with the regulations, was final. The United States Supreme Court in *Estep v. United States,* 327 U. S. 114, at pages 122-133, in considering this point, says:

> ". . . The provision making the decision of the local boards 'final' means to us that Congress was not to give administrative action under this Act the customary scope of judiciary review which ob-

tains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."

The Selective Service file of the appellant in the present case indicates sufficient basis in fact for the denial by the local and appellate boards of his claims as a minister and conscientious objector.

Appellant was employed 40 hours per week in an occupation devoted almost entirely to the production of materials for the carrrying on of a war. It cannot be said that either a local or an appellate board considering these facts was arbitrary or capricious in denying a claim of exemption as a minister of religion or conscientious objector to participation in war in *any* form.

There was, therefore, no error in the ruling of the trial court in refusing to grant appellant's Motion for Judgment of Acquittal.

B. Appellant Raises No Points Not Already Considered Under the Government's Argument in "A" Above.

It is therefore, respectfully requested that the Government's argument in answer to Specification of Error I be made applicable also to Specification of Error II.

C. There Was No Reversible Error in the Refusal of the Trial Court to Admit as Evidence the Investigative Report Made by the Federal Bureau of Investigation, Upon the Sincerity of Appellant's Conscientious Objector Claim.

It is established that exemption by reason of religious training and belief is not a constitutional right, *United States v. MacIntosh,* 283 U. S. 605; *Girouard v. United States,* 328 U. S. 61. However, Congress has provided for exemption by reason of religious training and belief. In making such a provision, Congress established a certain procedure to be followed in the procuring of these exemptions. Establishment of such a procedure has created certain "rights" which must be afforded all persons who can establish eligibility under its provisions. A variance from this procedure which prejudices the registrant in his request for exemption is admittedly a denial of due process.

Title 50, App., United States Code, Section 456, provides for deferments and exemptions from military training and service. Subsection (j) of Section 456 provides in pertinent part:

> "(j) . . . Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for *inquiry and*

hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned . . ." (Emphasis added.)

It is with the "inquiry and hearing" referred to in subsection (j) of Section 456 of the Universal Military Training and Service Act that we are concerned in the present case. Under the authority of subsection (j), the Attorney General has established certain procedures to be followed in the inquiry and hearing to be held by the Department of Justice. Provision is made for an investigation and report by agents of the Federal Bureau of Investigation. These reports are then forwarded to a Hearing Officer for his use in the hearing he conducts with respect to the character and good faith of the claims of conscientious objection of each particular registrant.

Prior to such a hearing, the Hearing Officer mails to the registrant a Notice of Hearing and Instructions to Registrants Whose Claims for Exemption as Conscientious Objectors Have Been Appealed. These instructions provide in part:

"2. *Upon request* therefor by the registrant at any time *after receipt by him of the notice of hearing, and before the date set for the hearing,* the Hearing Officer will advise the registrant as to the general nature and character of any evidence in his possession which is unfavorable to, and tends to defeat the claim of the registrant, such request being

granted to enable the registrant more fully to prepare to answer and refute at the hearing such unfavorable evidence." (Emphasis added.)

Since there is no constitutional right to exemption because of religious training and belief, any claimed denial of due process must necessarily then be based upon a variance from the procedures established by Congress or by administrative officials under a proper delegation of power. The evidence in the present case discloses no request by the appellant for adverse information held by the Hearing Officer. There is no contention that appellant made a request of the Hearing Officer [Tr. p. 23].

Without such a request, there is no duty which can be visited upon the Hearing Officer requiring him to disclose *any* information, either favorable or adverse, to the appellant. It is therefore submitted that there was no error in the refusal of the trial court to receive into evidence the investigative report of the Federal Bureau of Investigation.

United States v. Nugent, 346 U. S. 1;

Elder v. United States, 202 F. 2d 465 (9th Cir.).

VI.

Conclusion.

Appellant was properly classified by the local and appellate boards.

There was no error in the ruling of the trial court in refusing to grant the appellant's Motion for Judgment of Acquittal at the close of evidence.

There was no error of law in the ruling of the trial court in refusing to admit into evidence the investigative reports of the Federal Bureau of Investigation.

It is therefore respectfully submitted that the judgment of conviction should be affirmed.

Respectfully submitted,

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